

1 U.S. Trademark Registration Nos. 1,273,210 (“the ‘210 registration”) and 1,980,625 (“the ‘625
2 registration”) (collectively “Trade Dress” or “the Trade Dress”) and Huhtamaki’s express threats of
3 litigation related thereto. There is also an actual controversy because of Huhtamaki’s false and
4 misleading advertisements and representations that a T-shaped feature of its cup carrier trays is
5 patented, when it is not. In particular, Huhtamaki’s false and misleading claims, pertaining to patent
6 protections it does not have, lead customers of its products, and customers of Lollicup’s products, to
7 believe that Huhtamaki’s cup carriers have a nature, characteristics, or qualities that they do not.
8 The false and misleading claims also falsely inform the parties’ customers that Huhtamaki is the
9 only lawful seller of the cup carriers, and that Lollicup is an unlawful seller of its cup carriers.
10

11 2. Lollicup seeks a judgment that 1) it has not infringed, and is not infringing, the Trade
12 Dress; 2) the Trade Dress is invalid and/or unenforceable; and 3) Huhtamaki is estopped from
13 preventing others from practicing the Trade Dress. Lollicup also seeks a judgment that Huhtamaki
14 is liable to Lollicup for unfair competition and for falsely advertising that it has patent protections
15 that it does not have, and that *inter alia* Huhtamaki’s products have a nature, characteristics, or
16 qualities that they do not have. Lollicup also seeks damages and/or restitution, an injunction, and
17 attorney fees, costs, and other relief against Huhtamaki.
18

19 **THE PARTIES**
20

21 3. Plaintiff Lollicup is a California company with a business address of 6185 Kimball
22 Avenue, Chino, California 91708. Lollicup specializes in manufacturing and sales of high-quality,
23 environmentally friendly, disposable products for the restaurant and food service industry.
24 Lollicup’s product lines, sold under the trademark “Karat”, include food packaging, containers,
25 tableware, cups, lids, cutlery, and straws, as well as the cup carriers which are the subject of this
26 complaint.
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1 9. Huhtamaki, however, patented the features comprising the alleged Trade Dress
2 in U.S. Patent No. 6,398,056 (the ‘056 patent), issued to Huhtamaki in 2002. The ‘056 patent, in
3 fact, specifically claims the inverted T-shaped feature in multiple claims, including claims 5, 14,
4 and 23-24.

5 10. Under U.S. patent law, which finds its origins in a mandate of the U.S. Constitution,
6 an inventor who is granted a patent must dedicate the claimed invention to the public once the
7 patent term expires, as consideration for the ‘patent bargain’ for the (temporary) monopoly granted
8 to it. The ‘056 patent expired on July 10, 2020, and on that date, the inventions claimed in the ‘056
9 patent claims were irrevocably dedicated to the public. Consequently, Huhtamaki can no longer
10 claim exclusive rights to the inverted T-shape feature using the trademark laws. Courts have
11 repeatedly held that a product configuration claimed in an expired utility patent cannot later be
12 protected as trade dress, as doing so constitutes an unlawful extension of the limited monopoly
13 granted by patent law.
14

15 11. As an independent reason that Huhtamaki’s Trade Dress rights are foreclosed,
16 Huhtamaki’s alleged Trade Dress is *de jure* functional. That is, its primary purpose is to provide
17 functional improvements and features to Huhtamaki’s cup carrier trays. The purported Trade Dress
18 is therefore unprotectable under trademark law.
19

20 12. More specifically, the T-shaped cutout is essential to the function of the beverage
21 carrier tray, because (among other things) a) it provides flexible, yieldable stabilizing walls that
22 accommodate cups of different sizes while securing them in place; b) it plays a critical functional
23 role in cup stability including by providing resistance to tipping by providing improved carrier-to-
24 cup contact; c) it provides controlled flexibility without compromising strength; d) it aids carrier
25 tray stackability; and e) it reduces weight for storage and shipping. Huhtamaki’s own commercial
26 advertising touts similar functional features. Moreover, the ‘056 patent itself – written by
27
28

1 Huhtamaki - repeatedly emphasizes the functionality of the purported Trade Dress, including with
2 experimental data included in the '056 specification. The '056 patent also claims the feature in at
3 least four claims, which the Supreme Court of the United States has described as strong, essentially
4 insurmountable evidence of the type of 'functionality' which is a blanket bar to a party attempting
5 to claim Trade Dress in the same features. Thus, in addition to Huhtamaki's Trade Dress claims
6 being barred because of the Constitutional bargain it made, they are also barred because
7 Huhtamaki's purported Trade Dress is primarily functional.
8

9 13. Despite knowing that the Trade Dress features are functional, Huhtamaki withheld
10 this information from the United States Trademark Office when applying for the '210 and '625
11 registrations, thereby deceiving the Trademark Office into issuing unlawful registrations which
12 ostensibly foreclose the public from practicing what should be properly in the public domain,
13 contravening well-established, important public policy. It has also sought to baselessly enforce this
14 Trade Dress against Lollicup, threatening Lollicup with 'cease and desist' letters and promises of
15 litigation if Lollicup did not comply.
16

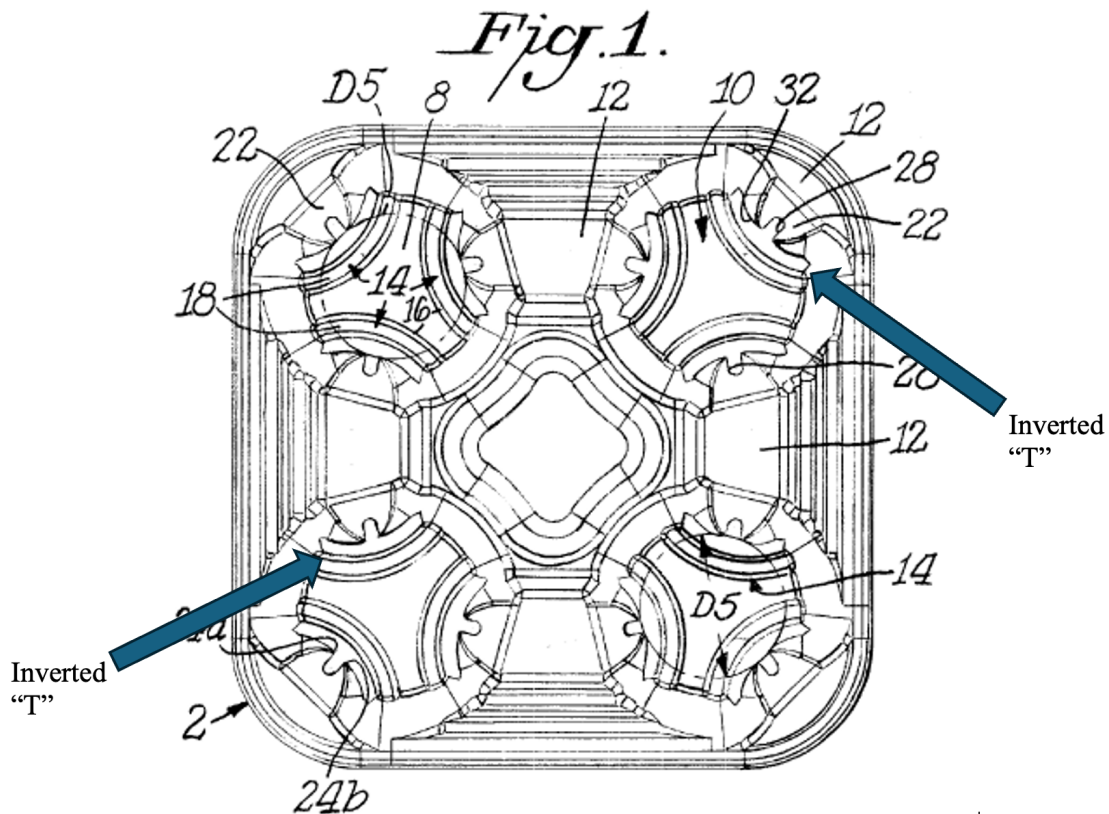
17 14. Similar to Huhtamaki's baseless Trade Dress claims, Huhtamaki also advertises and
18 publicly represents that the inverted T-shape feature of its cup carriers is currently patented. It is
19 not. These false and misleading claims lead customers of its products, and customers of Lollicup's
20 products, to believe that the cup carriers have a nature, characteristics, or qualities that they do not
21 have. The false and misleading claims also falsely inform the parties' customers that Huhtamaki is
22 the only lawful seller of products featuring the T-shaped feature, and that Lollicup is an unlawful
23 seller of its own cup carriers. These false claims have and will continue to harm Lollicup and are
24 flagrant violations of both state and federal law.
25

26 **II. Huhtamaki Acquired the '056 Utility Patent As Consideration for its Promise to**
27 **Dedicate the '056 Inventions to the Public Upon Expiration of the Patent Term**
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15. An application for utility patent, *TIPPING-RESISTANT CUP HOLDING TRAY*, was filed with the United States Patent and Trademark Office (“USPTO”) on July 10, 2000, in the name of Vincent Letourneau and Benton Brown, as U.S. Patent Application No. 09/613,261 (“the ‘261 application”).

16. Huhtamaki Company Technology, Inc. took ownership of the ‘261 patent application by way of assignment recorded in the records of the United States Patent Office. On information and belief, Huhtamaki Company Technology, Inc. is an affiliate entity owned or controlled (or subject to the common control of) Defendant Huhtamaki.

17. The cup carrier tray covered by that application is reproduced here from (example) Fig. 1 of the ‘056 patent that ultimately issued from the ‘261 application:



1 18. The ‘261 application included a written description of the inverted T-shape which
2 Huhtamaki now claims is its enforceable Trade Dress. The inverted T-shape disclosed in the ‘261
3 application, including within the Summary of Invention section, is the exact configuration of
4 inverted T-shape which Huhtamaki utilizes in its commercially sold cup carriers, such as the
5 StrongHolder® branded carriers offered in Huhtamaki’s product catalog. It is also the same inverted
6 T-shape claimed as Huhtamaki’s Trade Dress in both the ‘210 and ‘625 registrations.

7 **III. Huhtamaki’s Patent Protection Was for a “Limited Time”**

8 19. When Huhtamaki filed the ‘261 patent application for a utility patent, it struck a
9 bargain with the United States and the public at large. That bargain has its genesis in Article 1,
10 Section 8, Clause 8 of the Constitution of the United States. According to this bargain, if
11 Huhtamaki’s patent application were successful, Huhtamaki would be granted an “exclusive right”
12 to its invention for a “limited time.” After the limited term of any granted utility patent was over,
13 the rights to the invention disclosed, described, and/or claimed in the ‘261 application would enter
14 the public domain.

15
16 **IV. Huhtamaki’s ‘056 Utility Patent Expired and Huhtamaki’s ‘210 and ‘625**
17 **Registrations Impermissibly Seek to Revoke its Dedication of the T-Shaped**
18 **Design to the Public and to Extend its “Limited Time” Monopoly through**
19 **Federal Trademark Registrations**

20 20. The ‘261 patent application issued as the ‘056 patent on June 4, 2002.

21 21. As indicated on its face, Huhtamaki Company Technology, Inc. is the assignee of
22 record of the ‘056 patent. Based on the date of application, under then-applicable United States
23 patent law, the ‘056 patent expired twenty years from the earliest effective filing date, or on or
24 about July 10, 2020.

25 22. During the life of the ‘056 utility patent, Huhtamaki enjoyed the right to exclude
26 others from using the inverted T-shape in cup carriers, due to the existence of its patent monopoly.
27 However, on July 10, 2020, the inventions claimed in the ‘056 patent, including the inverted T-
28 shaped feature, were irrevocably dedicated to the public.

23. Huhtamaki's '210 and '625 registrations ostensibly cover (i.e., protect against copying) a product configuration incorporating an inverted T-shape essentially the same as the inverted T-shape disclosed and claimed in the '056 patent and which was dedicated to the public upon '056 patent expiration. Thus, breaking the constitutional patent bargain, the registrations unlawfully and inequitably purport to rescind Huhtamaki's dedication to the public and to extend Huhtamaki's 'Limited Time' monopoly, in conflict with the U.S. Constitution and patent statute.

V. Functional Features of Huhtamaki's Purported Trade Dress Abound in the '056 Utility Patent

24. The (expired) '056 patent contains a lengthy, highly detailed disclosure and discussion of Huhtamaki's Trade Dress, referred to as an "inverted T-shape" therein, which is replete with a description of its functional purpose when included in a cup carrying tray.

25. According to Huhtamaki's '056 patent specification itself, Huhtamaki's Trade Dress exhibits the following functions useful to the utilitarian purpose of carrying trays:

A. FUNCTION: Cup Stability and Secure Holding

26. According to the '056 patent, the inverted "T-shape" improves how the tray securely holds cups of different sizes by allowing stabilizing walls to flex outwardly while gripping the inserted cup. This is evinced in the Summary of the Invention (Column 3, Lines 19-27), which explains:

"The stabilizing walls are yieldable so that the stabilizing walls are deflected outwardly by a cup being inserted into the cup-holding socket. Each stabilizing wall extends down into the socket to a distance above the socket floor, so that an opening exists between the bottom edge of the stabilizing wall and the cup-contacting surface. In one embodiment of the invention, a slot vertically bisects the stabilizing wall, so that the opening and the slot together form an inverted 'T' shape."

1 Likewise, the Description of the Preferred Embodiments (Column 5, Lines 11-16) explains:

2 "The stabilizing walls 22 yield when a cup is inserted into the cup-holding socket, and are
3 deflected outwardly as the cup is inserted into the socket. The yieldability of the stabilizing
4 walls [attributable to the inverted T feature] can be [further] controlled by adjusting
5 thickness, density, and nature of the material, the angle of the stabilizing walls, and the like."
6

7 More specifically, the slot (upper part of the inverted "T") allows controlled outward deflection,
8 preventing cups from being too tightly held or too loose. Moreover, the opening beneath the
9 stabilizing wall (i.e., lower part of the inverted "T") allows flexibility while maintaining support.
10

11 **B. FUNCTION: Improved Resistance to Tipping**

12
13 27. The stabilizing walls formed by the removal of material to create the inverted "T-
14 shape" prevent tipping by ensuring cups remain upright even when the tray is tilted at different
15 angles. The T-shape also extends the depth of the socket floor for functional reasons. This is
16 evinced by the Summary of the Invention (Column 3, Lines 1-7) which explains:

17 "The lowermost and innermost points of the stabilizing walls [formed by inclusion of the
18 inverted T-shape] comprise contact points between the stabilizing wall and a cup. A feature
19 of the invention is that the depth of the socket floor is increased relative to the contact
20 points, as compared to prior art trays, such that the cup-holding socket has improved cup-
21 holding ability and is more resistant to tipping than prior designs."
22

23
24 28. The '056 patent specification, describing Experimental Test Results (Column 6, Line
25 18, to Column 7, Line 15; Tables A and B), highlights performance improvements obtained using
26 the carrier tray with the inverted T-shape, including as described in the patent as follows:

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28
 - Tests showed significant improvements over prior art trays.

- 1 ○ Tipping resistance for 32-ounce and 24-ounce cups at tilt angles of 25°, 30°, 35°, and
- 2 40° is compared, and the patentee concluded from the tests that the invention “offers
- 3 a significant improvement in the ability to hold large filled cups without tipping.”
- 4 (Column 7, Lines 12-14).
- 5
- 6 ○ The invention, which includes the inverted T-shape, had fewer failures than prior
- 7 trays (e.g., Chinet and Tenneco designs), proving superior cup stability.
- 8

9 29. More specifically, the inverted “T-shape” allows the walls to grip cups higher
10 up, reducing tipping risk when the tray is moved or tilted. Moreover, the use of the inverted T-
11 shape, to ensure cup contact points are positioned strategically, improves cup retention across
12 different cup sizes.

13 **C. FUNCTION: Structural Support and Controlled Flexibility**

14

15 30. The inverted "T-shape" design retains structural strength in the cup carrier while
16 ensuring flexibility to accommodate different cup diameters.

17

18 31. The specification, describing Distance and Ratio Definitions (Column 5, Line 31, to
19 Column 6, Line 18; Figure 3), also describes a “key ratio” which is obtained utilizing the inverted
20 T-shape, which optimizes cup contact points for stability and support. According to the ‘056 patent
21 specification:

- 22 ○ Distance D3 is the distance from the cup (side) contacting surface to the carrier
- 23 bottom (the contact point for the cup bottom);
- 24
- 25 ○ Distance D2 is the distance from carrier bottom to the stabilizing shoulder.
- 26
- 27 ○ The “key ratio” is defined as: $D3:D2 = 0.4 \text{ to } 0.5$, meaning in the described
- 28 utilitarian invention, the stabilizing walls, formed by the excision of material which

1 results in the inverted T-shape, contact cups at an optimal height for stability and
2 support.

3
4 See, also, Description of the Preferred Embodiments (Column 4, Line 64, to Column 5, Line 2;
5 Figures 1 and 3), which explains:

6 “Each stabilizing wall 22 extends downwardly from the corresponding stabilizing
7 shoulder 12 to a distance above the socket floor 8. The stabilizing wall 22 may optionally
8 include a slot 28 which vertically bisects the stabilizing wall. The lowermost, innermost
9 point of the stabilizing wall is defined as the contact point 24 of the stabilizing wall.”
10

11 32. In summary, the slot in the stabilizing wall (top of the inverted “T”) provides
12 controlled flexibility while maintaining overall tray strength, which is a functional, competitive
13 advantage of the trays described in the ‘056 patent. Further, the opening (i.e., bottom of the inverted
14 “T”) ensures force distribution, preventing excessive stress on any single point, in addition to
15 increasing the depth of the cup holding socket.
16

17 **D. FUNCTION: Nesting and Efficient Storage**

18 33. In addition to the above functions and benefits, the inverted "T-shape" configuration
19 allows for better stacking when trays are nested for storage and transport. This is evident from the
20 Background of the Invention (Column 1, Lines 14-17 (describing the invention)), which explains:
21

22 "The tray is shaped to permit empty trays to be nested, one within another, to form a
23 convenient and compact stack (‘cube’) for shipment and storage prior to use."
24

25 34. Specifically, the use of the inverted “T-shape” creates flexible stabilizing walls,
26 allowing the stabilizing walls to flex which aids in tray stacking. The use of the inverted T-shape
27 also removes material from the walls which thereby reduces frictional interference with stacking, in
28

1 addition to making sure that the trays remain lightweight and compact, reducing costs for shipping
2 and storage.

3
4 **E. FUNCTION: Claims Expressly Claiming the Inverted "T-Shape"**

5 35. Further serving as strong evidence that the T-shape (alleged by Huhtamaki to be its
6 protectable Trade Dress) is functional is that Huhtamaki expressly claimed the T-shaped feature in
7 the claims of the '056 utility patent. Indeed, the following claims claim the inverted "T-Shape",
8 demonstrating the shape's functionality, as well as its criticality to the invention:
9

10 Claim 5: "A tray as claimed in claim 4, wherein the opening between the contact point and
11 the cup-contacting surface and the slot in the stabilizing wall together form the shape of an inverted
12 'T' beneath each stabilizing shoulder."

13 Claim 14: "A tray as claimed in claim 13, wherein the slot in each stabilizing wall
14 extends vertically up the stabilizing wall and forms the shape of an inverted 'T' with the opening
15 between the contact point of the stabilizing wall and the cup-contacting surface."
16

17 Claim 23: "A tray as claimed in claim 19, wherein a slot in each stabilizing wall extends
18 vertically up the stabilizing wall, such that the slot forms the shape of an inverted 'T' with the
19 opening between the contact point of the stabilizing wall and the cup-contacting surface."
20

21 Claim 24: "A tray as claimed in claim 21, wherein a slot in each stabilizing wall extends
22 vertically up the stabilizing wall, such that the slot forms the shape of an inverted 'T' with the
23 opening between the contact point of the stabilizing wall and the cup-contacting surface."

24 36. In summary, consistent with the '056 patent being a utility patent, the '056
25 patent explicitly claims the inverted "T" shape as a structural and functional improvement with
26 primarily utilitarian purpose.

27 **VI. The Functional Features of Huhtamaki's Purported Trade Dress Are Touted in**
28 **Huhtamaki's Advertising**

1 37. Additional evidence that Huhtamaki's Trade Dress primarily serves a function is
2 found in Huhtamaki's own advertising. According to (for example) Huhtamaki's own food service
3 catalog, which lists the subject drink carriers for sale:

4 **All StrongHolder® drink carriers feature patented T-Slot design, enabling the carrier**
5 **to hold cups ranging from 8oz to 44oz firmly in place, without spilling or tipping.**

6 Available in 1, 2 or 4-cup options, StrongHolder® drink carriers are convenient and
7 compact, stacking and de-nesting with ease. Plus, StrongHolder® drink carriers are eco-
8 friendly – made from 100% recycled materials and compostable.

9 (emphasis added).

10 In other words, Huhtamaki's own advertising touts the ability of the "T-Slot design", embodied in
11 its StrongHolder® drink carriers, to hold cups securely across all cup sizes (e.g., varying diameters),
12 preventing cup movement when carried. The T-slot design is also described as preventing spillage
13 and tipping, which directly relates to the function of the stabilizing walls and contact points
14 described in the '056 patent.

15 38. Conversely, Huhtamaki's advertising (upon information and belief) does not tout the
16 T-shaped feature as a source identifier, so that it would function as 'trade dress' – a species of
17 trademark. For example, Huhtamaki's advertising does not direct its customers to 'look for' the T-
18 shaped feature so that they will recognize Huhtamaki as a source of cup holding trays which
19 incorporate the inverted "T".

20 39. Huhtamaki, likewise, does not mark the inverted T-shape with a trademark
21 registration symbol, or even the symbol "TM". Consequently, neither Lollicup nor the public was
22 placed on notice (constructive or actual) that the T-shape was a trademark or trade dress.

23 **VII. Even If Huhtamaki's Trade Dress is Valid and Enforceable, Lollicup Does Not**
24 **Infringe**

1 40. Even if Huhtamaki is found to be the owner of valid, enforceable Trade Dress rights,
2 Lollicup cannot be found to infringe such rights.
3

4 41. Copies of the inverted T-shape feature are ubiquitous in cup carriers sold by
5 competitors of Huhtamaki in the United States. Examples of such carriers are sold by Pactiv and
6 Uline. Consequently, even if Huhtamaki's Trade Dress 'marks' served as source identifiers at one
7 time, they do not do so now. The Trade Dress has become generic to cup carriers, which use it
8 principally because of its functional advantages, which are necessary to compete in the marketplace.
9

10 42. Also, Huhtamaki's and Lollicup's customers are large corporate, commercial
11 institutions. These customers are highly sophisticated and purchase the cup carriers by the
12 thousands or more. Thus, it is unlikely if not impossible for such customers to mistakenly purchase
13 Lollicup's cup carriers, mistakenly believing them to come from Huhtamaki as a source,
14 particularly when the carriers are typically bought from Lollicup as a direct supplier.

15 43. Confusion is also unlikely because of the differences between the appearances of the
16 Trade Dress and the inverted T-shaped cut-outs in Lollicup's products. A comparison is illustrated
17 below:
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25 As seen from this comparison, the inverted T-shaped configuration claimed in the '210 and
26 '625 registrations has visibly sharp, well-defined corners and edges, and an overall
27 symmetrical, sterile appearance, with the tips of the horizontal portion converging at sharp,
28 angular corners. Conversely, the horizontal portion of Lollicup's cut-out is more rounded,

1 with an organic, bulbous appearance, with tips formed from a continuous, uninterrupted
2 curve that u-turns, without forming a corner, towards the vertical stem. As for the vertical
3 stems themselves, Huhtamaki's vertical stem is perfectly symmetrical, with parallel sides
4 and a perfectly rounded top with a uniform radius of curvature. In contrast, Lollicup's
5 vertical stem is approximately 1/3rd the length (vis-à-vis Huhtamaki's), without perfectly
6 parallel sides, without a rounded top, and a utilitarian appearance that connotes a functional,
7 structural purpose rather than an intentional aesthetic. It also includes a vertical extension,
8 where the paper-fiber material remains unexcised.
9

10 **COUNT I**

11 **Declaratory Judgment of Invalidity and Unenforceability of the '210 and '625 Registrations** 12 **Based On Functionality**

13 44. This is a claim for declaratory judgment arising under the Declaratory Judgment Act,
14 28 U.S.C. §2201.
15

16 45. Lollicup reasserts and realleges all of the allegations contained in the foregoing
17 paragraphs as though the same were fully set forth herein.

18 46. The Lanham Act does not exist to reward manufacturers for their innovation in
19 creating a particular device. The Lanham Act, furthermore, does not protect trade dress in a
20 functional design simply because an investment has been made (assuming one has been) to
21 encourage the public to associate a particular functional feature with a single manufacturer or
22 seller.
23

24 47. Instead, if a product configuration, or if a product feature is functional, it cannot
25 serve as a trademark.

26 48. A product feature is functional, and cannot serve as a trademark, i) if it is essential to
27 the use or purpose of the article; or ii) if it affects the cost or quality of the article.
28

1 49. For a product configuration or feature, it is not necessary for the use of the product
2 configuration to be a competitive necessity to be functional. A product configuration is also
3 functional if it is a reason the product works and, once that is established, it does not matter if other
4 product configurations are possible.

5 50. If the functionality of a product configuration or feature is established, secondary
6 meaning need not be considered. Protection by trade dress is prohibited.

7 51. Huhtamaki's beverage carrier tray consists entirely of functional structural parts and
8 features. Similarly, the inverted T-shaped design covered by the '210 and '625 registrations is
9 embodied entirely by functional, structural features.

10 52. Huhtamaki's expired '056 utility patent describes and claims the exact same product
11 configuration covered by Huhtamaki's '210 and '625 trademark registrations. Moreover, the '056
12 patent describes the functionality of the inverted T-shape which Huhtamaki claims it owns as its
13 Trade Dress.

14 53. As established by Huhtamaki's '056 patent, as well as Huhtamaki's cup carrier
15 advertising, the purported Trade Dress claimed in the '210 and '625 registrations is functional *inter*
16 *alia* because it makes the product work for its intended purpose by a) providing flexible, yieldable
17 stabilizing walls that accommodate cups of different sizes while securing them in place; b) playing
18 a critical functional role in cup stability including by providing resistance to tipping by providing
19 improved carrier-to-cup contact; c) providing controlled flexibility without compromising strength;
20 d) aiding carrier tray stackability; and e) reducing product weight for storage and shipping.

21 54. Likewise, the configuration of the inverted T-shape Trade Dress was selected
22 because of practical, engineering-type considerations which contribute to economy of manufacture.

23 55. By registering the "inverted T-shaped openings" as a trademark, Huhtamaki has
24 deprived, and is attempting to continue to deprive, others of the opportunity to use the same
25 functional design, which substantially hinders competition.

1 Writings and Discoveries” (emphasis added)). The ‘210 and ‘625 registrations should also be
2 cancelled in accordance with 15 U.S.C. §1119.

3
4 **COUNT III**

5 **Declaratory Judgment of Noninfringement and/or Non-liability**

6 61. This is a claim for declaratory judgment arising under the Declaratory Judgment Act,
7 28 U.S.C. §2201.

8
9 62. Lollicup reasserts and realleges all of the allegations contained in the foregoing
10 paragraphs as though the same were fully set forth herein.

11 63. Lollicup was unaware of Huhtamaki’s ‘210 and ‘625 registrations prior to
12 Huhtamaki’s accusations of trade dress infringement.

13 64. On information and belief, Huhtamaki does not and did not mark its Trade Dress
14 with a registration symbol “®”, or any other marking compliant with 15 U.S.C. §1111, prior to
15 accusing Lollicup of Trade Dress infringement.

16
17 65. Lollicup is unaware of any actual confusion between the parties’ products which has
18 resulted from Lollicup’s use of a T-shape in its cup carrier trays.

19 66. The parties’ customers are highly sophisticated purchasers that typically purchase the
20 parties’ respective cup carriers directly from the parties, who each identify themselves as the source
21 of the cup carrier goods.

22
23 67. The T-shape claimed in the ‘210 and ‘625 registrations does not serve as a source
24 identifier, because Huhtamaki does not promote the T-shape as a source identifier, and it is also
25 inherently incapable of serving as a source identifier. Consumers see the T-shape as a functional
26 feature and not as a source-identifier, which identifies the source-origin of goods.

27 68. Even if the T-shape claims in the ‘210 and ‘625 registrations was a source identifier
28 at one time, it does not serve as a source identifier now. The use of the T-shape in cup carriers, by

1 parties other than Huhtamaki and Lollicup, is ubiquitous in the industry because of its functional
2 features and benefits. Consequently, the T-shape does not serve a source identifying function for
3 this reason, and has become generic to cup carriers.

4 69. Even if the purported Trade Dress was a source identifier, the T-shape that Lollicup
5 incorporates into its own products is ornamentally different in appearance, and the parties would not
6 be likely to confuse the source of Lollicup's products with Huhtamaki because of these ornamental
7 differences. This possibility of confusion is further foreclosed because Lollicup's cup carrier
8 products are sold in a manner that Lollicup is identified as their source.

10 70. Lollicup is entitled to a judgment that it does not infringe Huhtamaki's Trade Dress.
11 Alternatively, Lollicup is entitled to a judgment that Lollicup's liability is limited in accordance
12 with 15 U.S.C. § 1111, because Huhtamaki did not give notice of its '210 and '625 registrations
13 with any or adequate trademark markings.

15 COUNT IV

16 **False Advertising Under the Lanham Act, 15 U.S.C. § 1125(a)**

17 71. This is a claim for declaratory judgment arising under the Declaratory Judgment Act,
18 28 U.S.C. § 2201.

20 72. Lollicup reasserts and realleges all of the allegations contained in the foregoing
21 paragraphs as though the same were fully set forth herein.

22 73. Huhtamaki's false and misleading advertisements and representations that an
23 inverted T-shaped feature of its beverage carrier trays is patented, when it is not, is a violation of 15
24 U.S.C. § 1125(a). In particular, Huhtamaki's false and misleading claims pertaining to patent
25 protections it does not have lead customers of its products, and customers of Lollicup's products, to
26 believe that the beverage carriers have a nature, characteristics, or qualities that they do not have.
27 The false and misleading claims also falsely inform the parties' customers that Huhtamaki is the
28

1 only lawful seller of the beverage carrier trays, and that Lollicup is an unlawful seller of its
2 beverage carrier trays.

3 74. Huhtamaki has been unjustly enriched, and Lollicup has lost money and suffered
4 reputational damage resulting from Huhtamaki's false and misleading advertisements.

5
6 **COUNT V**

7 **Violation of the California Unfair Competition Law ("UCL")**
8 **Cal. Bus. & Prof. Code §§ 17200, *et seq.* (Pleading in the Alternative)**

9 75. This is a claim for declaratory judgment arising under the Declaratory Judgment
10 Act, 28 U.S.C. §2201.

11 76. Plaintiff reasserts and realleges all of the allegations contained in the foregoing
12 paragraphs as though the same were fully set forth herein.

13 77. Plaintiff and Defendant are "persons" within the meaning of the UCL. Cal. Bus. &
14 Prof. Code § 17201.

15 78. The UCL defines unfair competition to include any "unlawful, unfair or
16 fraudulent business act or practice," as well as any "unfair, deceptive, untrue or misleading
17 advertising." Cal. Bus. Prof. Code § 17200.

18 79. In the course of conducting business, Defendant engaged in unlawful and unfair
19 business acts by, among other things, falsely representing and advertising a) that it owns patent
20 protections that it does not have; b) that its products have a quality or character that they do not
21 have; and c) that Defendant is the only legally authorized seller of certain configurations of cup
22 carriers, including those which utilize an inverted T-shape.

23
24 80. Plaintiff is a victim of Defendant's unlawful conduct. Plaintiff appears to consumers
25 to be an unlawful seller of cup carriers, because of Defendant's false advertisements that Defendant
26 is the only lawful seller. Consequently, Plaintiff has lost sales as a result of this untrue perception.
27 Plaintiff has also lost sales and thus money, because consumers are being deceived, by Defendant's
28

1 false advertising, to believe that Defendant's cup carriers have superior qualities or characteristics,
2 or a particular nature, that Defendant's products do not actually have. Defendant's false advertising
3 likewise deceives consumers by conveying the false message that only Defendant's products have
4 certain product features, because they are patented, and no other competitor is (according to
5 Defendant's advertising) permitted to utilize them. Defendant's conduct is ongoing.

6
7 81. Defendant's actions, claims, and misleading statements were false, misleading
8 and/or likely to deceive, and did deceive, consumers within the meaning of Business & Professions
9 Code § 17200, *et seq.*

10 82. As a result of its unlawful and unfair business practices, Defendant was unjustly
11 enriched, at the expense of Plaintiff.

12 13 **COUNT VI**

14 **Unfair Competition Under California Common Law**

15 83. This is a claim for declaratory judgment arising under the Declaratory Judgment
16 Act, 28 U.S.C. §2201.

17 84. Lollicup reasserts and realleges all of the allegations contained in the foregoing
18 paragraphs as though the same were fully set forth herein.

19 85. Huhtamaki's actions described herein are unlawful and unfair and constitute unfair
20 competition under the common law of the State of California. As a result of the unlawful acts and
21 practices of Huhtamaki, Lollicup has suffered injury in fact and has lost, and continues to lose,
22 money or property.

23
24 86. Huhtamaki's conduct constitutes a continuing threat to Lollicup. Lollicup is thus
25 entitled to injunctive relief preventing Huhtamaki from continuing its wrongful course of conduct,
26 and enjoining Huhtamaki from its false advertising and from asserting or otherwise enforcing its
27 Trade Dress against Lollicup.
28

1 B. An order directing the U.S. Patent and Trademark Office to cancel U.S. Trademark
2 Registration Nos. 1,273,210 and 1,980,625 pursuant to 15 U.S.C. § 1119, on the basis that the
3 registrations claim functional subject matter;

4 C. A finding that Huhtamaki violated 15 U.S.C. § 1125(a); Cal. Bus. & Prof. Code §§
5 17200, *et seq.*; and California's common laws of unfair competition by i) falsely advertising that it
6 is entitled under patent law to exclude others from copying its cup carriers with the inverted T-
7 shaped design feature; ii) falsely advertising that its cup carriers have a nature, characteristics, or
8 features that are exclusive to Huhtamaki; iii) falsely advertising that its cup carriers have a nature,
9 characteristics, or features that the carriers do not have; and iv) falsely informing the public that
10 Lollicup is not a lawful user of inverted T-shapes in its own cup carriers;

11 D. An order requiring that Huhtamaki and its officers, agents, servants, employees,
12 owners and representatives, and all other persons, firms or corporations in active concert or
13 participation with them, be enjoined and restrained from:
14

15 (1) Using in any manner the term "patented" on or in connection with Huhtamaki's
16 unpatented beverage carrier trays;

17 (2) Using or displaying the term "patented" on product literature and in advertising of
18 Huhtamaki's unpatented beverage carrier trays; and
19

20 (3) Directly or indirectly enforcing the Trade Dress against Lollicup or its customers, or
21 otherwise accusing Lollicup or its customers of infringement of such Trade Dress, whether privately
22 or publicly;
23

24 E. An order requiring that Huhtamaki, pursuant to 15 U.S.C. § 1116(a), file with this
25 Court and serve upon Lollicup within thirty (30) days after entry of an injunction, or such extended
26 period as the Court may direct, a written report under oath describing in detail the manner and form
27 in which Huhtamaki has complied with the injunction, including ceasing all manufacture and sale of
28

1 its unpatented beverage carrier trays, as well as all distribution of product literature and advertising
2 of its beverage carrier trays, falsely displaying the term “patented”;

3 F. An award to Lollicup of monetary damages or restitution in an amount to be fixed by
4 the Court in its discretion and as just;

5 G. A finding that this is an exceptional case under 15 U.S.C. § 1117(a), together with an
6 award to Lollicup of its attorney fees and its costs and expenses of litigation pursuant to 15 U.S.C. §
7 1117(a);

8 H. An order awarding Lollicup pre-judgment and post-judgment interest to the full
9 extent allowed under the law, as well as its costs; and

10 I. Such other and further relief as the Court may deem just, proper, and equitable under
11 the circumstances.

12
13
14 **DEMAND FOR JURY TRIAL**

15 Pursuant to Fed. R. Civ. P. 38(b), Lollicup requests a jury trial on all issues so triable.

16
17
18 Dated: February 5, 2025

Respectfully submitted,

/s/ Sarah Woodson

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CERTIFICATE OF SERVICE

I hereby certify that on this date, a true and correct copy of the foregoing was filed via the Court's CM/ECF system, thereby effectuating service upon all counsel of record via electronic means.

Dated: February 5, 2025

/s/ Sarah Woodson

Sarah Woodson
Attorney for Lollicup USA Inc.